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$$\left. \begin{array}{l}) \\) \\) \\) \\) \\) \\) \\) \\) \end{array} \right\}$$

Plaintiff,

V.

ORDER

Defendants.

I. *In Forma Pauperis* Application

II. Screening the Complaint

1

1 U.S. 662, 678 (2009). The Court liberally construes pro se complaints and may only dismiss them
2 “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
3 would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Iqbal*,
4 556 U.S. at 678).

5 To determine whether the complaint is sufficient to state a claim, all allegations of material
6 fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar Summit P’ship*
7 *v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). Although the standard under Rule
8 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than mere labels
9 and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation
10 of the elements of a cause of action is insufficient. *Id.* Finally, unless it is clear that the complaint’s
11 deficiencies cannot be cured through amendment, a pro se plaintiff should be given leave to amend
12 the complaint with notice regarding its deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th
13 Cir. 1995).

14 Here, Plaintiff’s claims arise out of her residency at the Senior Garden Apartments (“SGA”),
15 located at 1809 and 1813 E. Charleston Blvd., Las Vegas, Nevada. Plaintiff alleges that beginning in
16 January, 2016, she was a resident at SGA, and was subject to abusive and discriminatory behavior of
17 Defendant Steven Rameriz, who was a resident and employee of SGA. Plaintiff also alleges that
18 Russell Ricciardelli, owner of SGA, was a party to this abuse. Plaintiff alleges the abuse continued
19 throughout her residency at SGA, and culminated with a notice of eviction, served on Plaintiff on
20 July 12, 2017. Plaintiff alleges the conduct of Defendant Rameriz included repeated grabbing of
21 Plaintiff’s body, demands for “payment of a hug” for services rendered, asking for kisses, sexual
22 invitations, refusal of repair services when Rameriz’s advances were rejected, and refusal by
23 Defendant Ricciardelli to intervene when confronted with Plaintiff’s complaints.

24 Plaintiff’s complaint alleges five causes of action against Defendants: (1) “Sexual
25 Harassment - Quid Pro Quo,” (2) “Sexual Harassment - Hostile Environment,” (3) discrimination,
26 (4) intentional infliction of emotional distress (“IIED”), and (5) negligent infliction of emotional
27 distress (“NIED”). The Court will consider each of Plaintiff’s causes of action.

28 **A. Sexual Harassment - Quid Pro Quo and Creation of Hostile Environment**

1 The Fair Housing Act (“FHA”) prohibits discrimination based on sex in the sale or rental of
2 housing. *See* 42 U.S.C. § 3604. Federal courts have recognized that sexual harassment is a form of
3 sex discrimination that is prohibited by, and actionable under, the FHA. *Salisbury v. Hickman*, 974
4 F. Supp. 2d 1282, 1290 (E.D. Cal. 2013). *See also Quigley v. Winter*, 598 F.3d 938, 946 (8th
5 Cir.2010); *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir.1996); *Honce v. Vigil*, 1 F.3d 1085,
6 1089–90 (10th Cir.1993); *Shellhammer v. Lewallen*, 770 F.2d 167 (6th Cir.1985). Specifically,
7 where the sexual harassment creates a “hostile housing environment” or constitutes “quid pro quo
8 sexual harassment,” it is actionable under the FHA. *United States v. Hurt*, 676 F.3d 649, 654 (8th
9 Cir.2012) (quoting *Quigley*, 598 F.3d at 946–47). Quid pro quo harassment occurs when housing
10 benefits are explicitly or implicitly conditioned on sexual favors. *Quigley*, 598 F.3d at 946-947

11 To prevail on a hostile housing environment claim, a plaintiff must establish that she was
12 subjected to (1) unwelcome (2) sexual harassment that was (3) sufficiently severe or pervasive so as
13 to interfere with or deprive the plaintiff of her right to use or enjoy her home. *Salisbury*, 974 F. Supp
14 2d at 1290.

15 To prevail on an housing discrimination quid pro quo claim, a plaintiff must establish that:
16 (1) she was a member of a protected class; (2) she was subjected to unwelcome harassment in the
17 form of sexual advances or requests for sexual favors; (3) the harassment was based on sex; and (4)
18 her submission to the unwelcome advances was an express or implied condition for enjoyment of
19 housing benefits. *See Quigley*, 598 F.3d at 947.

20 Plaintiff’s complaint establishes a prima facie case for both of the above forms of housing
21 discrimination under the FHA. Plaintiff alleges that based on her sex, and over the course of nearly
22 two years, Defendant Rameriz subjected her to repeated, unwanted sexual invitations, suggestions,
23 and demands, and that her refusal to accede led to her eviction. Liberally construing Plaintiff’s
24 allegations, the Court finds a sufficient basis for claims of a hostile housing environment, and
25 housing discrimination quid pro quo.

26 **B. Discrimination**

27 Plaintiff’s third cause of action is a standalone discrimination claim. Upon review of the
28 complaint, it appears this claim is duplicative of Plaintiff’s first two counts of housing discrimination

1 under the FHA. The Court will therefore dismiss this claim with leave to amend.

2 **C. Negligent Infliction of Emotional Distress**

3 When a district court sits in diversity, or hears state law claims based on supplemental
4 jurisdiction, the court applies state substantive law to the state law claims. *Mason & Dixon*
5 *Intermodal, Inc. v. Lapmaster Int'l LLC*, 632 F.3d 1056, 1060 (9th Cir. 2011). Plaintiff's NIED is a
6 state law claim, heard under the Court's supplementary jurisdiction stemming from her federal
7 claims. The Court will therefore consider the NIED claim under Nevada law.

8 Nevada recognizes a cause of action for NIED when "a bystander suffers serious emotional
9 distress which results in physical symptoms caused by apprehending the death or serious injury of a
10 loved one due to the negligence of [a] defendant." *Chowdhry v. NLVH, Inc.*, 851 P.2d 459, 462
11 (Nev. 1993). When a physical impact is established, a plaintiff may also recover under an NIED
12 claim for a negligent act that has been committed directly against her. *Id.* However, Nevada courts
13 have consistently "required a plaintiff alleging negligent infliction of emotional distress to
14 demonstrate some 'physical impact' beyond conditions of insomnia or general discomfort." *Sadler*
15 *v. PacifiCare of Nev.*, 340 P.3d 1264, 1268 (Nev. 2014).

16 Here, Plaintiff alleges Defendants' conduct caused severe and enduring emotional distress,
17 which was accompanied by "physical repercussions" as well as "heightened fear" (Pl's. Compl.,
18 ¶ 38 (ECF No. 1-1)). However, Plaintiff does not offer any specific allegation of a physical impact
19 caused by Plaintiff's conduct. Nor does she specify what emotional distress she suffered beyond
20 "heightened fear." As noted above, a complaint must provide more than mere labels and conclusions
21 in support of a claim. The Court will therefore deny Plaintiff's claim for NIED, with leave to amend.

22 **D. Intentional Infliction of Emotional Distress**

23 As with her NIED claim, Plaintiff's IIED claim will be considered under Nevada law. *Mason*
24 *& Dixon Intermodal*, 632 F.3d 1056. In Nevada, to prevail on a claim for intentional infliction of
25 emotional distress, a plaintiff must establish (1) extreme and outrageous conduct with either the
26 intention of, or reckless disregard for, causing emotional distress; (2) that plaintiff suffered severe or
27 extreme emotional distress; and (3) actual or proximate causation. *Dillard Dept. Stores, Inc. v.*
28 *Beckwith*, 989 P.2d 882, 886 (Nev. 1999).

1 Here, as with her claim for NIED, Plaintiff does not allege any specific severe emotional
2 distress resulting from Defendants' conduct, beyond presenting a rhetorical question "how many
3 ways could Plaintiff say NO?" (Pl's. Compl., ¶ 42). As noted above, a complaint must provide
4 more than mere labels and conclusions in support of a claim. The Court will therefore deny
5 Plaintiff's claim for IIED, with leave to amend.

6 **III. Plaintiff's Motion for Judicial Notice of Relevant State Court Documents**

7 Construing Plaintiff's motion for judicial notice (ECF No. 5) liberally, it appears that
8 Plaintiff asks the Court to consider certain attached documents in support of her complaint, and in
9 opposition to any attempt to dismiss her complaint. While a court may review material which is
10 properly submitted as part of a complaint when considering a motion to dismiss (*See Lee v. City of*
11 *Los Angeles*, 250 F.3d 668, 688-689 (9th Cir. 2011)), it is not clear which of Plaintiff's five causes of
12 action the documents are meant to support. Given that Plaintiff has been given leave to amend her
13 complaint, Plaintiff is advised that she may incorporate the material from the documents as factual
14 allegations in an amended complaint, should she choose to file one. The Court will therefore deny
15 the motion for judicial notice without prejudice.

16 **IV. Conclusion**

17 IT IS THEREFORE ORDERED that Plaintiff's application for leave to proceed *in forma*
18 *pauperis* (ECF No. 1) is GRANTED. The order granting leave to proceed in forma pauperis does not
19 extend to the issuance of subpoenas at government expense. Plaintiff's motion for expedited
20 consideration of *in forma pauperis* status (ECF No. 4) is DENIED as moot. Plaintiff's motion for
21 judicial notice in support of *in forma pauperis* status (ECF No. 10) is DENIED as moot.

22 IT IS FURTHER ORDERED that the Clerk of Court shall FILE Plaintiff's complaint (ECF No.
23 1-1) on the docket.

24 IT IS FURTHER ORDERED that Plaintiff's third claim for discrimination, her fourth claim for
25 intentional infliction of emotional distress, and her fifth claim for negligent infliction of emotional
26 distress are DISMISSED, with leave to amend, for failure to state a claim upon which relief can be
27 granted. Plaintiff shall have thirty (30) days from the date of this order to file an amended complaint if
28 she believes she can assert facts or provide materials that address the noted defects of the complaint.

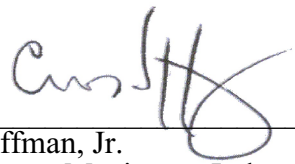
1 Failure to file a timely amended complaint will result in a recommendation that these claims be
2 dismissed with prejudice.

3 IT IS FURTHER ORDERED that if Plaintiff chooses to file an amended complaint, the amended
4 complaint shall be complete in and of itself, without reference to the previous complaint, as required by
5 Local Rule 15-1. Plaintiff shall also title the amended complaint with the words, "FIRST AMENDED
6 COMPLAINT," on page one in the caption.

7 IT IS FURTHER ORDERED that the Clerk of Court must send Plaintiff a USM-285 form and
8 a proposed summons form, along with a copy of this order. Upon receipt, Plaintiff must complete both
9 forms with all required information and return them to the Clerk within thirty days. Upon receipt of the
10 completed USM-285 and proposed summons form, the Court will enter a further order for service upon
11 Defendants.

12 IT IS FURTHER ORDERED that Plaintiff's motion for judicial notice (ECF No. 5) is DENIED
13 without prejudice.

14 DATED: March 9, 2018

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17 C.W. Hoffman, Jr.
18 United States Magistrate Judge
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